

## COMMERCIAL RELATIONS

*Exchange of notes at Rome December 16, 1937*

*Entered into force December 15, 1937*

*Not revived after World War II*<sup>1</sup>

51 Stat. 361; Executive Agreement Series 116

*The American Ambassador to the Minister of Foreign Affairs*

ROME, December 16, 1937

### EXCELLENCY:

Inasmuch as the Treaty of Commerce and Navigation between the United States and Italy, signed at Florence, February 26, 1871,<sup>2</sup> which terminated on December 15, 1937, in consequence of the joint notice of denunciation of December 15, 1936, provided for the most-favored-nation treatment in customs matters and negotiations for a new treaty to replace it have not been completed, it seems desirable that steps be taken now to determine the treatment which will be accorded by each country to the commerce of the other during the interval between the date on which the treaty of 1871 terminated and the date on which the proposed new treaty will come into force.

In the course of the negotiations of the proposed treaty, the governments of the two countries have tentatively agreed upon the provisions of Article VIII thereof which deals with customs duties, import prohibitions and restrictions, import licenses, exchange control, and monopolies affecting imports and is annexed hereto.

It is agreed that on its part the Government of Italy will in fact apply the provisions of Article VIII of the proposed new treaty on and after December 15, 1937, and that the Government of the United States on its part will continue to accord to articles the growth, produce or manufacture of Italy the benefits of the minimum rates of the American tariff as established in its trade agreements with other countries (Cuba excepted), until 30 days after notice by either party of its intention to discontinue such treatment

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<sup>1</sup> Not included among treaties and other agreements continued in force or revived Feb. 6, 1948, pursuant to art. 44 of treaty of peace signed at Paris Feb. 10, 1947 (TIAS 1648, *ante*, vol. 4, p. 325).

<sup>2</sup> TS 177, *ante*, p. 82.

It is understood that the stipulations of this temporary arrangement do not apply to:

A) Preferential advantages which Italy accords to Austria, Albania, Bulgaria, Hungary, and Yugoslavia between December 15, 1937 and December 31, 1937.

B) Preferential tariff advantages which Italy accords to Austria after December 31, 1937 under the terms of the treaty between Italy and Austria signed at Rome on November 30, 1937.

I avail myself of this opportunity to renew to your Excellency the expression of my highest consideration.

WILLIAM PHILLIPS

#### ANNEX

*Article VIII of the proposed Treaty of Friendship, Commerce and Navigation between the United States of America and Italy*

With respect to (1) the amount and collection of customs duties or charges of any kind, including any accessory or additional duties or charges, coefficients or increases imposed on or in connection with importation, exportation, temporary importation, temporary exportation, or warehousing or transit; (2) the method of levying or collecting such duties, charges, coefficients or increases; (3) all rules and formalities in connection with importation or exportation; and (4) all laws or regulations affecting the sale, taxation, or use of imported goods within the country; any advantage, favor, privilege or immunity which has been or may hereafter be granted by either High Contracting Party to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

Neither of the High Contracting Parties shall establish or maintain any import or export prohibition or restriction on any article originating in or destined for the territory of the other High Contracting Party, which is not applied to the like article originating in or destined for any third country. Any abolition of an import or export prohibition or restriction which may be granted by either High Contracting Party in favor of an article originating in or destined for a third country shall be applied immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

If either High Contracting Party establishes or maintains any form of quantitative restriction or control of the importation, sale, or exportation of any article in which the other High Contracting Party has a considerable interest, including the regulation of importations, sales or exportations thereof by licenses or permits issued to individuals or organizations, the High Con-

tracting Party taking such action: (1) shall establish the total quantity of any such article permitted to be imported, sold, or exported during a specified period, (2) shall immediately communicate to the other High Contracting Party the provisions adopted together with the complete details with respect to the administration thereof, and (3) in the case of imports, shall allot to the other High Contracting Party for such specified period a proportion of such total quantity equivalent to the proportion of the total importation of such article which the other High Contracting Party supplied during a previous representative period, and (4) in the case of exports, shall allot to the other High Contracting Party for such specified period, a proportion of such total quantity equivalent to the proportion of the total exportation of such article which was supplied to the other High Contracting Party during a previous representative period, unless it be mutually agreed to dispense with such import or export allotment.

If either High Contracting Party establishes or maintains, directly or indirectly, any form of control of the means of international payment, it shall, in the administration of such control:

(a) Impose no prohibition, restriction, or delay, on the transfer of payment for imports of articles the growth, produce, or manufacture of the other High Contracting Party, or on the transfer of payments necessary for and incidental to the importation of such articles;

(b) With respect to rates of exchange, and taxes or surcharges on exchange transactions, in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, accord unconditionally treatment no less favorable than that accorded in connection with the importation of any article the growth, produce, or manufacture of any third country; and

(c) With respect to all rules and formalities relating to exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, accord unconditionally treatment no less favorable than is accorded in connection with the importation of the like article the growth, produce, or manufacture of any third country.

With respect to non-commercial transactions each High Contracting Party shall apply every form of control of foreign exchange in a non-discriminatory manner as between the nationals of the other High Contracting Party and the nationals of any third country.

In the event that either High Contracting Party establishes or maintains a monopoly for the importation, production or sale of a particular product or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular product, the High Contracting Party

establishing or maintaining such monopoly, or granting such monopoly privileges, shall, in respect of the foreign purchases of such monopoly or agency, accord the commerce of the other High Contracting Party fair and equitable treatment. In making its foreign purchases of any article such monopoly or agency shall be influenced solely by competitive considerations such as price, quality, marketability, and terms of sale. Either High Contracting Party shall supply such information with respect to the foreign purchases of every such monopoly or agency as the other Party may at any time request.

The High Contracting Parties will consult with each other in respect of any matter presented by either Party relating to the application of the provisions of this article.

*Memorandum of Interpretation of Article VIII*

*Paragraph three.*—The total amount of any permitted import, of which a share is to be assigned by either country to the other, shall include all imports of the regulated article, including such imports as may be made through public or private clearing, compensation, or payment arrangements.

If the authorities of either country permit imports additional to the amount of any quota which has been established by establishing a supplementary quota, in that event an equitable share of such supplementary quota is to be assigned unconditionally to the other country.

It is also to be understood that the “representative” base period should be one in which the trade of the other country was not being impaired by discriminations and was not seriously affected by conditions of an unusual and temporary character.

*Paragraph four, sub-paragraph (a).*—To impose the condition that payment for the importation of any article must be presented in compensation would be to impose a “restriction” on the transfer of payment.

*Paragraph four, sub-paragraph (b).*—In determining most favored nation treatment with respect to rates of exchange it is suggested that a suitable criterion would be cross rates of exchange in some free market.

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*The Minister of Foreign Affairs to the American Ambassador*

[TRANSLATION]

ROME, December 16, 1937

MR. AMBASSADOR:

In a note dated today, Your Excellency has communicated to me the following:

[For text of U.S. note, see p. 179.]

I have the honor to advise Your Excellency that the Italian Government is in agreement with the foregoing.

Please accept, Mr. Ambassador, the assurance of my highest consideration.

CIANO

ANNEX

*Article VIII of the Treaty of Friendship, Commerce, and Navigation Between Italy and the United States of America, in Course of Negotiation*

[For text, see p. 180.]

*Memorandum for the Interpretation of Article VIII*

[For text, see p. 182.]